

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-1381

United States of America,

Appellee,

v.

Floyd Neal,

Appellant.

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Appeal from the United States
District Court for the
Northern District of Iowa.
[UNPUBLISHED]

Submitted: October 7, 1999

Filed: October 28, 1999

Before WOLLMAN, Chief Judge, FLOYD R. GIBSON, and RICHARD S. ARNOLD,
Circuit Judges.

PER CURIAM.

Floyd Neal pleaded guilty to conspiring to distribute cocaine base, in violation of 21 U.S.C. § 846. On appeal, counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), suggesting that the district court¹ incorrectly applied U.S. Sentencing Guidelines Manual § 4B1.1 (1998) in calculating Neal's base offense level

¹The Honorable Michael J. Melloy, Chief Judge, United States District Court for the Northern District of Iowa.

and erred in denying his downward-departure motion based on his age and physical condition.

We conclude that the district court properly sentenced Neal under section 4B1.1 as a career offender, as the record demonstrates that he commenced the instant offense in January 1996 and had been incarcerated during the preceding fifteen-year period for at least two prior qualifying felony convictions. See United States v. Jones, 87 F.3d 247, 248 (8th Cir.) (per curiam), cert. denied, 519 U.S. 956 (1996). Because the record demonstrates that the district court's refusal to depart downward based on Neal's age and physical condition was an exercise of discretion, we conclude that the denial of such a departure is unreviewable. See United States v. Kessler, 48 F.3d 1064, 1065 (8th Cir. 1995).

In accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), we have reviewed the record for any nonfrivolous issues and have found none. We grant counsel's motion to withdraw.

The judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.